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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,241	07/15/2003	Stephen N. Donnigan	DynDecoy-US Nonprov	1282
33549	7590	02/09/2005	EXAMINER	
SANTANGELO LAW OFFICES, P.C. 125 SOUTH HOWES, THIRD FLOOR FORT COLLINS, CO 80521			ROWAN, KURT C	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 02/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<p><b>Office Action Summary</b></p>	<b>Application No.</b> 10/621,241	<b>Applicant(s)</b> DONNIGAN ET AL.	
	<b>Examiner</b> Kurt Rowan	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-149 is/are pending in the application.
- 4a) Of the above claim(s) 6-30, 46-49, 64-88, 109-112, 117, 124-126, 138 and 139 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 31-45, 50-63, 89-108, 113, 116, 118-123, 127-137 and 140-149 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/15/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 6-30, 26-49, 64-88, 109-112, 117, 124-126, 138, 139 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 23, 2004.
2. Applicant's election with traverse of the election in the reply filed on November 23, 2004 is acknowledged. The traversal is on the ground(s) that the reasons relied on for holding the claimed invention in restriction should be concisely stated. This is not found persuasive because the other species are patentably distinct due to different structural elements.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

- 3.
4. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. The photos shown used as Figs. 5-6, 9 are incomprehensible. All of the photos should be replaced with drawings. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

5. Figures 11-12 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 4, 39, 50, 102, 118, 122, and 143 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 is confusing since claim 1 does not comprise the separately available commercial decoy. In reference to claims 39, 102, 122, 143, it is improper to employ trademarks in a claim. In reference to claims 4, 118, claim 4 and claim 118 do not end with a period ".", it is not clear if part of the claim is missing and therefore the scope of the claim can not be determined. For the purposes of this Office Action, it is assumed that the periods were merely omitted inadvertently. All the claims should be closely checked for errors under 35 USC 112, second paragraph.

8. Claim 50 recites the limitation "the market condition" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-5, 31-45, 50-51, 52-63, 89-108, 113, 116, 119-123, 127-128, 129-137, 140-145, 146-147, 148-149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babbitt et al. ( U.S. 6,212,816)

11. The patent to Babbitt shows a decoy 10 having a base element 36, a turntable 45 responsive to the base element, an electrical wind independent turntable motion provision element 16, 17, 18, 19 as shown in Fig. 11 , and a game bird decoy attachment 26. Babbitt does not disclose that the game bird decoy moving apparatus is usable to move each of at least three different type of separately commercially available game bird decoys without requiring substantive modifications. In reference to claims 1, 52, 116, 129, 146, and 148, it would have been obvious to employ at least three different commercial decoys to suit different hunting conditions such as for different game birds and different poses of these birds such as feeding, resting, or sentry. In reference to claim 3, Babbitt shows an electric motor 16. In reference to claim 4, Babbitt shows a substantially disc shaped turntable 45 in Fig. 4. In reference to

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claim 5, Babbitt shows a goose decoy. In reference to claim 31, Babbitt does not disclose if the decoy is sold separately, but Babbitt clearly contemplates using different decoys as disclosed in column 5, lines 18-22 and possibly could be employing commercially available decoys since it is disclosed to cut off the legs and feet of a full body decoy in column 5, lines 60-67. Babbitt also discloses that it is a prior art decoy that is modified. At any rate, it would have been obvious to employ commercially available decoys since the function is the same and the user could thus avoid the pitfalls of having to make their own decoys such as time and expense. In reference to claim 32, Babbitt does not disclose that the sweep rotates faster in one direction than the other, but it would have been obvious to make the sweep rotate faster in one direction to make the decoy more life-like. In reference to claim 33, Babbitt shows a camming device 19, 20 to which the turntable is responsive. In reference to claim 34, Babbitt discloses a 30 degree sweep in column 4, line 33. In reference to claim 38, Babbitt discloses a full body decoy. In reference to claim 39, Babbitt does not disclose the recited commercial decoys, but it would have been obvious to employ any of the recited decoys to attract game birds while hunting, noting that the function of all the recited game bird decoys is the same. In reference to claim 40, Babbitt shows a column 11 having a base (not labeled but located directly under the turntable 45 in Fig. 2) on a lower portion of the turntable 45. In reference to claim 41, Babbitt shows an electric motor 16 in column 11 as shown in Fig. 2. In reference to claim 42, Babbitt shows the column comprises at least a part of the game bird attachment means 26 since the attachment means is located on the turntable which is located on the column. In

reference to claim 44, Babbitt shows a circular column 11, but it would have been obvious to employ a non-circular cross-section since changes in shape are obvious noting that the function is the same. See *In re Dailey et al.*, 149 USPQ 47. In reference to claim 45, Babbitt shows a battery pack or power supply 14 in column 4, lines 46-47. In reference to claim 51, Babbitt discloses that the game bird decoy employed is from the prior art, and that, it is full body decoy. However, it would have been obvious to employ other decoy shapes such as shell decoys depending on hunting conditions and the type of game bird being sought.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, reading "Kurt Rowan". The signature is fluid and cursive, with a large, stylized "K" and "R".

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR